IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9151 OF 2004

Mandakini Kotak — Petitioner

vs.

Indian Bank & ors. — Respondents

Mr.S.G.Aney i/b. Mr.Ashoki Purohit for the petitioner.

Mr.A.Y.Bookwala i/b. M/s.Pandya Gandhi & Co. for the respondent no.1.

Mr.U.M.Mody i/b.M/s.RMG Law Associates for the respondent no.3.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 31st March 2005

P.C.

Heard.

2. During the course of motion hearing, the learned counsel for the first respondent-Indian Bank submitted that merits of the controversy regarding preliminary issue framed and decided by the Presiding Officer, Debts Recovery Tribunal No.1, Mumbai on 16th July 2003 may not be examined by us in extraordinary jurisdiction at this stage and the petitioners may be given liberty to challenge the legality and correctness of the order dated 16th July 2003 in the appeal against the final order of the Debts Recovery Tribunal, if such necessity arises. In this backdrop the learned counsel for the

first respondent-Indian Bank submitted that the order passed by the Debts Recovery Appellate Tribunal on 27th April 2004 in Misc. Appeal No.342/2003 be set aside without going into merits thereof.

3. The submission of the learned counsel for the first respondent-Indian Bank appears to us to be fair and reasonable. In our considered view, no prejudice shall be caused to the petitioners if they are granted liberty to challenge the order passed by the Debts Recovery Tribunal on 16th July 2003 when the final order is appealed from by the petitioners, if necessary. On behalf of the first respondent-Indian Bank a statement has already been made and that we accept that the order passed by the Debts Recovery Appellate Tribunal on 27th April 2004 be set aside without going into merits. There would, thus, be no impediment for the petitioners in challenging the order dated 16th July 2003 passed by the Debts Recovery Tribunal in the appeal if the petitioners are aggrieved by the final order.

4. In other words, all contentions regarding the legality and correctness of the order dated 16th July 2003 passed by the Debts Recovery Tribunal are kept open to be agitated in the appeal against the final order if the occasion so arises.

5. We, accordingly, dispose of this writ petition by the following order:

(i) The order dated 27th April 2004 passed by the Debts Recovery Appellate Tribunal, Mumbai in Misc. Appeal No.342/2003 is set aside and rendered ineffective.

(ii) The controversy regarding the legality and correctness of the order dated 16th July 2003 passed by the Debts Recovery Tribunal is kept open to be agitated by the petitioners in the appeal against the final order, if necessary and so advised.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)